

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

BERNARD KELLY, #526389,

Petitioner,

Case No. 12-cv-11005

v.

Honorable Thomas L. Ludington

KENNETH ROMANOWSKI,

Respondent.

**ORDER DENYING MOTION FOR RECONSIDERATION, DENYING A
CERTIFICATE OF APPEALABILITY AND LEAVE TO PROCEED
IN FORMA PAUPERIS ON APPEAL**

On March 25, 2015, Petitioner Bernard Kelly's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 was denied and dismissed with prejudice on the merits. Kelly was denied leave to proceed in forma pauperis on appeal and a certificate of appealability was denied. The Sixth Circuit further denied him leave to appeal and analyzed the threshold merits of his claims.

Kelly filed a motion for relief from judgment pursuant to Rule 60(b)(1) on March 24, 2016. His motion claims that this Court erred in analyzing a number of his habeas claims. That motion was denied on April 27, 2016.

Kelly has now filed a motion for reconsideration of the Court's April 27, 2016 Order denying his motion for relief from judgment. This motion will also be denied.

A motion for reconsideration will be granted if the moving party shows: "(1) a palpable defect, (2) the defect misled the court and the parties, and (3) that correcting the defect will result in a different disposition of the case." *Michigan Dept. of Treasury v. Michalec*, 181 F. Supp. 2d

731, 733-34 (E.D. Mich. 2002) (quoting E.D. Mich. LR 7.1(g)(3)). A “palpable defect” is “obvious, clear, unmistakable, manifest, or plain.” *Id.* at 734 (citing *Marketing Displays, Inc. v. Traffix Devices, Inc.*, 971 F. Supp. 2d 262, 278 (E.D. Mich. 1997)).

Rather than demonstrate a palpable defect, Kelly continues to press on the assertions he made in his motion for relief from judgment: that his claims were not properly analyzed. As explained in the April 27 Order, Kelly’s argument that his claims were not properly analyzed amounts to no more than displeasure that his claims were not resolved in his favor. Also as already explained, the Sixth Circuit has analyzed Kelly’s claims and reached conclusions adverse to Kelly. He does not furnish any basis on which the conclusions of this Court or the Sixth Circuit should be revisited.

Shortly after he filed his motion for reconsideration, Kelly filed a notice that he was appealing the Court’s April 27 Order and sought leave to proceed *in forma pauperis*. Before Kelly may appeal the Court’s decision, a certificate of appealability must issue. See 28 U.S.C. § 2253(c)(1)(a); Fed. R. App. P. 22(b). A certificate of appealability may issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). When a federal district court denies a habeas claim on the merits, the substantial showing threshold is met if the petitioner demonstrates that reasonable jurists would find the court’s assessment of the constitutional claim debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). “A petitioner satisfies this standard by demonstrating that . . . jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). In applying that standard, a district court may not conduct a full merits review, but must limit its examination to a threshold inquiry into the underlying merit of Petitioner’s claims. *Id.* at 336-37. “The district court must issue or deny a

certificate of appealability when it enters a final order adverse to the applicant.” Rules Governing § 2254 Cases, Rule 11(a), 28 U.S.C. foll. § 2254.

As with Kelly’s underlying habeas petition, Kelly also has not demonstrated a substantial showing of the denial of a constitutional right. Accordingly, a certificate of appealability is not warranted in this case. Leave to proceed *in forma pauperis* on appeal will also be denied as an appeal cannot be taken in good faith. See *Foster v. Ludwick*, 208 F. Supp. 2d 750, 764 (E.D. Mich. 2002); 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24 (a).

Accordingly, it is **ORDERED** that Petitioner Bernard Kelly’s motion for reconsideration, ECF No. 24, is **DENIED**.

It is further **ORDERED** that Petitioner Bernard Kelly is **DENIED** a certificate of appealability.

It is further **ORDERED** that Petitioner Bernard Kelly’s application to proceed *in forma pauperis* on appeal, ECF No. 27, is **DENIED**.

Dated: August 2, 2016

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on August 2, 2016.

s/Michael A. Sian
MICHAEL A. SIAN, Case Manager